

ENVIRONMENTAL NEWS



Newsletter of the N.H. Department of Environmental Services

November/December 2003

Governor's Message

The most important resources in our State are the natural resources that New Hampshire is known for – our mountains, our trees and our water. In recognition of the importance of these resources to the citizens of New Hampshire in every aspect of daily life – health wise, economically, ecologically, and in many other ways – I have given my full support to a lawsuit, filed by Attorney General Peter Heed, against twenty-two major oil companies for widespread contamination of State waters with the gasoline additive MtBE.

The lawsuit, against companies such as Exxon-Mobil Corporation and Lyondell Chemical Company,



Governor Benson

alleges that the oil companies chose to add MtBE to gasoline sold in the state despite their knowledge that MtBE was likely to contaminate water supplies and that it is a defective product. It also alleges violations of state environmental and consumer protection laws. MtBE can cause a foul odor and taste in drinking water at low concentrations and

can pose health risks to people at higher levels. The Attorney General and the State of New Hampshire are simply asking the court to hold the oil companies responsible for this contamination, to pay for the costly investigation and cleanup, and to pay reparations for the injury to our natural resources.

Our water is a precious resource. It is depended upon for drinking and recreation, as well as every aspect of our health and economic well-being. The State of New Hampshire is dedicated to ensuring the conservation of these precious resources and the protection of our citizens from companies and organizations that may harm those resources.

Craig R. Benson
Governor

Troy Mills Landfill added to Superfund list

The Troy Mills Landfill in Troy was named a Superfund (National Priorities List) site by the U.S. Environmental Protection Agency this fall. The National Pri-



orities List is EPA's list of the country's most serious uncontrolled or abandoned hazardous waste sites that have been identified for long-term cleanup. The Superfund makes public funds available to clean up toxic waste sites when private financing is unavailable. The government can later recoup its costs from current and past owners of the property.

That is not a blue tarp nor the reflection of the sky. That is the actual color of some of the contaminating leachate exposed at the Troy Mills landfill. Photo provided by John Splendore, DES.

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Commissioner's Column

Addressing septage disposal capacity

New Hampshire is the fastest growing state in New England. With that growth comes new homebuilding, which in turn calls for an expanded capacity to dispose of greater volumes of domestic wastewater. As a by-product of normal septic system operation, semi-solid and solid residuals (known collectively as "septage") are generated and must be removed from septic tanks on a regular basis to be disposed at permitted facilities designed to handle such wastes. In 2002, population growth resulted in nearly 90 million gallons of septage generated by an estimated

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State sues major oil companies over MtBE pollution

Attorney General Peter W. Heed announced in early October that New Hampshire had filed a lawsuit in state court against major oil companies that added the chemical methyl tertiary butyl ether (MtBE) to gasoline, causing widespread contamination of the state's waters with a chemical that is costly to find and remove.

Governor Craig Benson and DES Commissioner Michael Nolin simultaneously announced their full support of the lawsuit. The lawsuit claims that 22 major oil companies, including ExxonMobil Corporation and Lyondell Chemical Company, have added increasing amounts of MtBE to New Hampshire's gasoline even though they knew years ago that it would contaminate water supplies. The state alleges that the manufacturers and refiners produced a defective product, created a public nuisance and violated state environmental and consumer protection laws. The state asks the court to hold the companies responsible for all costs associated with addressing the problem, including investigative and cleanup costs, and to assess monetary penalties.

Attorney General Heed said, "In New Hampshire, clean water is a precious resource that we depend upon for drinking, recreation and every aspect of our health and economic well being. MtBE has become a significant and costly threat, especially to the underground aquifers that most of us rely upon for drinking water. These companies knew of the dangers that adding MtBE to gasoline posed to water resources. They, and not the state or its citizens, should pay the bill to fully address this unprecedented environmental problem." MtBE has been associated with adverse health consequences and can render water unpalatable, even at very low levels. Because

MtBE dissolves easily in water, it travels faster and farther than other gasoline constituents and is more difficult to find and remove, making cleanup more expensive.

Approximately 60 percent of the state's population relies on groundwater wells for drinking water. The state's lawsuit cites several statistics on contamination of those supplies. For example, as of 2002, MtBE was detected in more than 15 percent of the public water supplies tested statewide. More than 33 percent of those tested in Strafford County and more than 23 percent of those tested in Rockingham County contained some level of MtBE contamination. In addition, the state's preliminary analysis of more recent data generated by a joint DES/U.S. Geological Survey study of Rockingham County's public water systems, which used lower detection limits, shows that 41 percent of those tested contain some level of MtBE. The state also estimates, based on studies from other states, that about 40,000 private wells in New Hampshire contain some level of MtBE.

DES Commissioner Nolin said, "We are already addressing water systems that have MtBE levels exceeding the health-based standard of 13 ppb, but MtBE is pervasive and there is widespread impact that cannot necessarily be addressed under state regulations. This lawsuit complements our existing efforts with a more proactive approach to identifying and restoring all contaminated and threatened waters with funding from those who are responsible."

Contact Maureen D. Smith, Senior Assistant Attorney General, at (603) 271-3679, for further information. A copy of the state's lawsuit can be found on the N.H. Department of Justice website at www.doj.nh.gov. ■

EPA presents Brownfield grant in Keene

The U.S. Environmental Protection Agency awarded \$200,000 to the Southwest Region Planning Commission in Keene to help assess, clean and

redevelop abandoned, contaminated parcels known as brown-



fields. Under the Brownfields Program, communities and other entities receive funding to assess contamination at abandoned and vacant sites and to estimate the costs of cleaning up sites for redevelopment. Since 1995, EPA has provided more than \$67 million of Brownfields assistance to dozens of communities and agencies around New England. For more information on the state's Brownfields Program, please contact Mike Wimsatt at (603) 271-6422. ■

ENVIRONMENTAL NEWS



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Scott named director of Air Resources Division

Robert R. Scott was recently confirmed as Director of DES's Air Resources Division. Bob brings a wide range of environmental and leadership experiences and strengths to his new role, including a notable military background.

"We are very fortunate to have a person of Bob's caliber as head of the Air Resources Division," said DES Commissioner Mike Nolin. "Not only has Bob proven to be an effective, highly respected and well-liked manager, he has demonstrated leadership in the air quality arena at the local, regional and national level, working effectively with municipal officials, environmental groups, the New Hampshire Legislature, New Hampshire's congressional delegation, and the regulated community."



Bob joined DES's Air Resources Division in 1995 as an air pollution control engineer. Since then, Bob has been responsible for managing and overseeing projects such as the air pollution compliance assistance and enforcement program, the Gasoline Vapor Recovery Program, regional and national mobile source related programs, federal air quality implementation plan submittals, and the air quality analysis for the Manchester Airport expansion project. Most recently, as chief air programs manager and acting director, Bob has managed all air program activities including permitting, outreach, technical assistance, air monitoring, and compliance assurance, and has been instrumental in guiding DES's information management steering committee. In this capacity, he was instrumental in orchestrating an agreement to allow the reopening of the Fraser paper mill in Berlin-Gorham.

In addition to his work at DES, Bob proudly serves as a major with the Maine Air National Guard and acts as director of operations for the 265th Combat Communications Squadron. He was called to active duty in February and served as commander of the 332nd Expeditionary Communications Squadron in Kuwait until July, overseeing a squadron of 138 active duty and reserve troops.

Prior to joining DES, Bob served as an Officer in the U.S. Air Force, Pease AFB and the U.S. Air Force Reserves in Massachusetts. In addition, he worked as a design engineer, production supervisor and environmental compliance program manager for a New Hampshire manufacturing company. He received his bachelor's degree in mechanical engineering from Lehigh University.

Bob resides in Bow with his wife, Lesley, and their two teenage daughters, Margaret and Michelle. ■

MIKE NOLIN

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200,000 approved septic systems. This volume exceeded the state's existing capacity to properly manage these residuals, causing nearly 23 percent of that volume to be disposed in other states. For example, southern New Hampshire communities (where the bulk of population growth has occurred) rely heavily on Massachusetts facilities to process these residuals. Without new or expanded septage handling facilities, future growth in New Hampshire may become restricted based on those infrastructure limitations.

To explore what others are doing, and to assess the applicability and transferability of their treatment and disposal systems to New Hampshire, I asked Assistant Commissioner Mike Walls, Dick Flanders, and Pat Hannon of our Residuals Management Program to accompany Executive Councilor Raymond Wieczorek, State Rep. Donald Philbrick, Ron Poltak of the New England Interstate Water Pollution Control Commission, Manchester Public Works Director Frank Thomas, Robert Cruess of TF Moran, as well as three current septage haulers/facility owners to accompany me on a fact-finding tour of three state-of-the-art facilities in Massachusetts. Officials from the consulting firm of Camp, Dresser & McKee hosted the tour of the Greater Lawrence Sanitary District in North Andover, the Wayland/Sudbury wastewater treatment facility, and the Yarmouth-Dennis Septage Treatment Plant on Cape Cod.

The tour demonstrated that a combination of standard and innovative methods used by these facilities may be applicable and transferable to New Hampshire. The use of state aid grant funding could support the development of state-of-the-art treatment/disposal technologies, such as off-peak bleed-in of septage flows and land application of tertiary wastewater onto golf courses. While resources are limited and economies-of-scale are generally insufficient to support regional facilities like those in Massachusetts, New Hampshire communities do have an opportunity to upgrade their existing wastewater treatment facilities on a short-term basis using new technologies and creative operational changes. In fact, such innovative measures are already being utilized in the towns of Plymouth and Pittsfield. I will continue to pursue the development of long-term, and perhaps even regional, septage treatment and disposal systems in an effort to reduce the state's reliance on out-of-state facilities and to ensure the construction of an adequate infrastructure to serve our growing needs. For more information, please contact Dick Flanders, DES, at (603) 271-3571 or rflanders@des.state.nh.us. ■

TROY MILLS

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"I am pleased that the EPA has dedicated significant resources toward the cleanup of this site," said DES Commissioner Mike Nolin. "We look forward to working with the community and the EPA during this important project to ensure that risks posed by these wastes are reduced and the environment is restored for the benefit of those who live, work, and play in the Troy area."



Troy Mills in Troy.

The Troy Mills Landfill (also called the Rockwood Brook Landfill), which is owned by Troy Mills, Inc., is located about 1.5 miles south of the center of Troy off a dirt road on the company's mostly wooded 270-acre property. The 11-acre landfill was used from 1967 to 2001 as an industrial waste disposal area by the owner, a local fabric manufacturer. From 1967 to 1978, two acres were used to dispose of up to 11,000 drums of liquid wastes and sludges containing Varsol, vinyl resins, plasticizers, pigments, top-coating products and industrial organic solvents. After 1978, the remaining nine acres were used to dispose of waste fabric scraps and other solid waste from the company's manufacturing complex. EPA and the state identified elevated levels of metals, volatile organic compounds (VOCs), and semi-volatile organic com-



Piles of waste fabric scraps and other solid wastes were dumped over nine acres.

(below) One of the 11,000 buried drums, now corroded and leaking contaminants, found at the Troy Mills landfill.



pounds (SVOCs) leaking from waste at the landfill, endangering the downstream fisheries, recreation areas, and wetlands.

Contaminated leachate has been documented seeping from the landfill into a wetland area that drains to Rockwood Brook. "Free product" was detected at groundwater monitoring locations and wetlands downgradient of the buried drums. EPA is currently constructing an interim system to collect this free product and the state will take over operation of the system. Sand Dam Pond, a recreational pond used for swimming and fishing is located on Rockwood Brook approximately one mile downstream of the landfill.

Under the supervision of DES, Troy Mills, Inc. completed several detailed design studies until the company filed for bankruptcy protection in 2001 and could not follow through with approved cleanup plans.

For more information on DES's on-site cleanup efforts, please contact John Splendore at (603) 271-5569. ■

At other NH Superfund sites

EPA completed its five-year review of the **Tibbetts Road** Superfund site in Barrington in late October. The results of the study have shown that the cleanup remedy is functioning as intended and that there has been a reduction in the overall level of contamination at the site.

DES and EPA have found an additional continuing source of groundwater contamination at the **Kearsarge Metallurgical Corp.** Superfund site in Conway. Excavation and disposal of this area of contaminated soil should be completed this fall. In addition, the existing extraction system is being improved with the installation of a larger trench in the source area.

For more information about the Superfund program in New Hampshire, please contact Carl Baxter, DES, at (603) 271-2908. ■



Contaminated leachate has been documented seeping from the landfill into a wetland area.

Compliance measures: count beans or bust?

by Gretchen Rule, Administrator, DES Legal Unit

Value for money. Just as consumers want to be sure they are getting it when making purchases, taxpayers want to be sure they are getting it when budgets are passed. But how do we know when a state agency is giving value for the money that has been allocated to it?

For environmental agencies, the yardstick originally used to measure performance (*i.e.*, value) was the number of inspections performed, the number of enforcement cases initiated, and the amount of penalties collected. If an agency's budget increased, it was expected that the inspection, enforcement, and penalty numbers would likewise increase. Under the original "command and control" philosophy of federal (and most state) environmental laws, this worked largely because these "bean counts" were relatively easy to report and track. Further, people could see that surface waters were getting cleaner, the air was clearer on more days, and there was less trash lying all over the countryside – so the bean counts coupled with visual evidence sufficed to convince most people that value was being given for the money allocated.

Two things have happened to cause many people to question the value of continuing to use inspection/enforcement beans as the primary way of determining whether an environmental agency is performing effectively. First, most of the big point sources of pollution have been controlled or eliminated, so current enforcement efforts do not often result in big, visible improvements to ambient conditions. Second, a greater emphasis is being placed on preventing pollution before it is created, which is not measured at all by traditional bean counts.

A third factor also comes into play, but it is not frequently discussed: what do fluctuations in the bean counts really mean? If the number of inspections performed is relatively stable and the number of enforcement cases decreases, does that mean (as the press frequently reports) that the agency is "getting soft" on compliance? Or does it just mean that the agency is doing a better job with education and outreach, so that more facilities are in compliance? If the inspections are stable and the number of enforcement cases increases, are the inspectors getting more picky? Or are they simply better trained? Or are there economic factors at play that have resulted in the environmental compliance staff of many companies being laid off so that there really are more violations?

Further, most bean counts do not give good information on the state of the regulated community. Knowing that an agency did 126 inspections and took 32 enforcement actions in which penalties were sought in 5 tells us very little. It would be more helpful to know, for example, that the 126 inspections were of 98 facilities (*i.e.*, some facilities were inspected more than once) and that the 32 enforcement actions addressed 198 violations, of which only 15 were "significant" violations. However, even this additional information does not give us a sense of the regulated community as a whole; to get there, we need to know whether the regulated community has 98 or 980 or some other number of facilities in it.

Despite the growing recognition that bean counts are not a good measure (and certainly not a complete measure) of the agency's efficiency or of the level of compliance in the regulated community, most environmental agencies continue to count and report these beans. Why? The major reason is the difficulty in finding other ways to measure the performance of the agency and regulated communities. Until we develop credible alternatives, it is unlikely that we will be able to decrease our reliance on bean counts. Future articles will discuss efforts that are underway to find such alternatives. ■



Please Turn Engine Off DES & DOT announce new signage project

DES and the state Department of Transportation announced a new signage program to reduce vehicle idling at roadside rest areas. New "user friendly" signs are being installed by DOT at roadside information and rest areas to inform drivers, particularly heavy-duty diesel truck drivers, about state regulations that limit idling time. The goal of the program is to reduce diesel exhaust emissions and improve the state's air quality.

Signs that ask drivers to "Please Turn Engine Off When Parked" are being installed near the entrances of roadside information and rest areas. Signs that say "Thank You for Not Idling" are posted close to area exits. The first signs were installed recently and motorists will soon be seeing them at all the major roadside information areas.

"This is a great way to remind all drivers, especially truck drivers, of the importance of limiting idling time whenever practical," noted Michael Nolin, DES Commissioner. "We are working very closely with DOT to inform people of the regulations and how they can protect their health and improve air quality by reducing diesel exhaust from heavy-duty vehicles."

The new signs are part of a state-wide education and outreach program aimed at reducing diesel exhaust from heavy-duty vehicles. Besides focusing

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DES implements new hazardous waste management self-certification program

Program for small quantity generators has three-year phase-in

by Sharon Yergeau, Administrator, Waste Prevention & Technical Information

DES has initiated a self-certification program for small quantity generators (SQGs) of hazardous waste in New Hampshire under RSA 147-A:5, IV. The N.H. Legislature established the new program in 2003 to improve the compliance of small quantity generators with existing hazardous waste management requirements. SQGs are businesses and other entities that generate less than 220 pounds (100 kilograms, approximately 26 gallons of most liquids) of hazardous waste in each and every month.

The new law requires SQGs to review their hazardous waste management procedures, conduct a self-inspection of their facility and certify compliance to DES. The agency is sponsoring free workshops to assist SQGs with their efforts to comply with the new law.

The statute requires each SQG to certify compliance every three years and to pay a fee of \$60 per year, payable every three years at the time of certification. The program is being implemented in three phases to create a manageable and consistent workload. Regardless of the date the first certification is due, every SQG will pay \$60 per year beginning with 2004. Political subdivisions of the state are exempt from the fee, but not from the certification requirements.

SQGs in Rockingham and Strafford Counties were the first to receive the self-certification package mailed on October 1. The forms must be completed and returned to DES by January 1, 2004. If the facility is *not* in compliance, it must complete the form, indicating any area(s) of non-compliance, and prepare a *Corrective Action Plan* describing the steps the facility will take to come into compliance, includ-

ing a schedule.

"Releases from SQGs have created about a third of the hazardous waste sites in New Hampshire over the last five years," noted DES Commissioner Mike Nolin. "SQGs have been subject to inspection by DES staff since the early 1980s, but with about 5,000 hazardous waste generators in the state, it became clear that DES could not assure the compliance of such a large group of generators by continuing with the typical inspection and enforcement model to deter non-compli-

ance. This new program allows small quantity generators to become more active environmental stewards, to become more aware of the *Hazardous Waste Rules*, and to be able to self-certify their compliance, thereby offering greater protection to our public health and the environment."

DES will conduct follow-up inspections at a statistically valid number of the SQGs selected at random to measure their performance.

For more information or for assistance, SQGs can visit the DES website at www.des.nh.gov/sqg/, or call DES staff toll-free, in-state at 1-866-HAZ-WAST (1-866-429-9278) or (603) 271-2942. ■

DES takes step in adopting wetland mitigation rules

by Lori Sommer, DES Wetlands Bureau

DES has proposed a new chapter and modifications of three existing sections of the state's wetland rules to establish mitigation requirements for certain impacts to wetlands. A public hearing on the proposed rules, called the "Mitigation Rules," was held in July, at which time public comments were received. Those present included state and federal agency representatives, members from the Association of General Contractors, N.H. Association of Natural Resource Scientists, Granite State Designers and Installers, Conservation Law Foundation, Audubon Society of New Hampshire, and other interested parties.

Since the late 1980s, DES has been issuing dredge and fill permits with conditions that relate to wetland creation, restoration and upland preservation. In the mid-1990s, an evaluation of wetland mitigation in New Hampshire was conducted and resulted in recommendations for state policy. Recognizing that consistent application of the policy would benefit from formal rule making, the rules were drafted with the help of various steering committees over several years.

Many comments were received at the July public hearing. As a result, minor changes were made to clarify and strengthen the rules. A public informational meeting was held October 31 to explain the revised version that the department will be filing for formal rule making and to accept further comments. The revised version provides specific criteria for compensatory mitigation and clarifies that compensatory mitigation is required for all impacts to jurisdictional areas that meet or exceed a specified threshold level. In addition, the language requires avoidance and minimization of wetland impacts prior to consideration of compensation, and provides a ratio table that details the amount of compensation needed relative to the resource being lost.

Information about the mitigation rules can be found at the DES website at www.des.nh.gov/wetlands/rule-law.htm#proposed. Information on the final adopted rules will be reported in this newsletter as it becomes available. ■

DES participates in goodwill mission to El Salvador

Environmental problems and their solutions come from many sources. So it was natural for DES to be asked to send a representative to join a goodwill mission to El Salvador to share ideas and strategies to address that country's environmental and hazardous waste issues. Tony Giunta, administrator of DES's Water Supply Engineering Bureau, joined a delegation heading to El Salvador in early November as a part of the National Guard State Partnership Program, a federal initiative that promotes government, cultural, education, business and military exchanges between U.S. states and other countries. New Hampshire has been partnered with El Salvador to help that Central American country strengthen its socio-economic infrastructure.

"The entire delegation will share strategies related to hazardous waste management, storage and disposal," noted Giunta before leaving. "For my part, I will share strategies of hazardous waste management that have worked here in New Hampshire. This trip is really a 'transfer of knowledge.' So I'll pay close attention to what also works in El Salvador. We may be able to learn as much from our friends in El Salvador as they learn from us."

Giunta was joined by three professors of engineering from UNH and four representatives from the Army and Air National Guards.

"There are many more areas of the environment that a transfer can benefit," Giunta continued. "Issues of clean drinking water and disposal of municipal solid wastes are challenges both our societies currently face and will continue to face in the future. If we listen as well as lecture, we may find solutions that would have never been evident if we hadn't gone on this technology exchange mission." ■

WWTFs receive national awards for excellence

DES staff cited for outstanding on-site technical assistance

It's not easy operating a wastewater treatment facility, under any circumstances. That's why the DES Wastewater Engineering Bureau's Operation Section was particularly elated when the municipal facilities in Antrim and Lisbon were recently selected by the U.S. Environmental Protection Agency for national Operations and Maintenance Excellence Awards. The two plants were among five facilities in New England, and 17 nationwide, recognized for exemplary performance. National award winners were formally acknowledged at this year's Water Environment Federation meeting in October.

The staff of the Antrim Wastewater Treatment Plant was recognized by EPA for their outstanding work in operating and maintaining the facility and their overall commitment to improving water quality. The Antrim plant won first place among small secondary plants. The entire facility has been rebuilt in recent years by Superintendent James Cruthers, resulting in cost savings of about \$500,000, with nearly all repair and replacement work having been performed by Cruthers. With town support, Cruthers has put in place a financial management program that increased reserves four-fold over the past five years.

The Lisbon wastewater treatment plant won first place for the "most improved" facility. The plant operator, Welch's Water and Wastewater Services, working in cooperation with DES, has turned this once destitute and mismanaged facility into what is now an well-operated and maintained plant. The staff has completely overhauled the laboratory, which had been totally neglected. Innovative process control techniques have improved effluent quality and an outstanding equipment maintenance program has been put in place. In addition, the operator has overcome numerous challenging events in emergency response situations. The facility and collection system have improved to the point where the likelihood of any preventable emergency situation in the future is minimized.

The DES Wastewater Engineering Bureau's Operations Section was also recognized by EPA by receiving the Jack Sampson National award for providing outstanding on-site technical assistance – not only to the Lisbon Wastewater Treatment Plant, but to the other wastewater treatment plants in the state as well. ■



More than 100 people attended a farewell reception at the Grappone Conference Center in Concord for Dr. Philip J. O'Brien (center), who served as the director of the Waste Management Division for 13 years. Here he receives a clock presented by Ken Marschner (right) and Fred McGarry. Photo by Amy Azeredo.



Commissioner Mike Nolin (fourth from right) and invited guests tour the Yarmouth-Dennis Septage Treatment Plant in Massachusetts. (See page 1 for story.)

Private Well Initiative receives recognition

On behalf of the agency, Tony Giunta received the “Distinguished Public Involvement Award” from the New England Water Works Association for the Water Supply Engineering Bureau’s “Private Well Initiative.” The award plaque reads “for outstanding achievements, leadership, commitment and support of professional, proactive public relations.” ■

SIGNAGE

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on reducing idling time, the program is aimed at reducing black smoke emissions (known as opacity) from on-road vehicles through free smoke opacity testing and outreach to truck and bus fleet managers and drivers. The overall program is being funded through the federal DOT Congestion Mitigation and Air Quality Program.

Carol Murray, DOT Commissioner said, “Our effort to install ‘no idling’ signs at the highway rest areas is an excellent example of state agencies working together toward a common goal. Both DES and DOT are concerned with reducing the impact of motor vehicle exhaust emissions on public health and air quality.”

Diesel exhaust has been classified as a probable human carcinogen by the U.S. Environmental Protection Agency and numerous scientific studies indicate that excess exposure to diesel exhaust can cause lung damage, respiratory problems, premature death, and lung cancer. By reducing truck idling, drivers are protecting their own health and the health of people around them, while at the same time saving money on fuel costs and engine wear and tear.

For information on motor vehicle emission reduction programs, contact Mike Fitzgerald, DES, at (603) 271-6390. For more information on the new signs at highway information and rest areas, contact William Lambert, DOT, at (603) 271-2291. ■



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